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S. ANNE WALKER, 5TH DISTRICT  
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COMMISSIONERS  
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DR. D.H. DANIEL, 3RD DISTRICT  
JAMES C. McLEOD, JR., 6th DISTRICT

GARY R. BAKER  
EXECUTIVE DIRECTOR

# State of South Carolina

## State Ethics Commission

(803) 758-7408  
1122 Lady Street, Ste. 930  
Columbia, S.C. 29201

# NEWSLETTER

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APR 8 1986

February 1986

STATE DOCUMENTS

No. 86-002

## COMMISSION'S 10th ANNIVERSARY RECOGNIZED

February 20 marked the tenth anniversary of the initial operation of the State Ethics Commission. To recognize this milestone, the General Assembly has passed the following Resolution. The Resolution, introduced by the House of Representatives Ethics Committee and the Senate Ethics Committee, states:

### A SENATE (HOUSE) RESOLUTION

TO RECOGNIZE THE STATE ETHICS COMMISSION ON THE OCCASION OF ITS TENTH ANNIVERSARY AND TO COMMEND THE COMMISSION FOR THE INVALUABLE AND IMPORTANT SERVICE IT HAS PERFORMED DURING THE PAST DECADE.

WHEREAS, on May 29, 1975, the General Assembly enacted legislation entitled the State Ethics Act; and

WHEREAS, the State Ethics Act created the State Ethics Commission, an agency of the State of South Carolina with responsibility for implementation, administration, and enforcement of certain aspects of the State Ethics Act; and

WHEREAS, the State Ethics Commission organized and began operations on February 20, 1976; and

WHEREAS, since February 1976, the members and staff of the State Ethics Commission have devoted considerable time and effort in carrying out the legislative mandate to restore public confidence in public office through implementation, administration, and enforcement of the State Ethics Act; and

WHEREAS, the State Ethics Commission has rendered 574 advisory opinions, taken action on 288 complaints, and

annually received an average of approximately 10,000 Statements of Economic Interest and Campaign Disclosure Forms; and

WHEREAS, public office is a trust granted by the citizens of the State of South Carolina; and

WHEREAS, the members and staff of the State Ethics Commission serve the public to preserve the dignity of the institution of public service; and

NOW THEREFORE, BE IT RESOLVED by the Senate (House of Representatives):

THAT the members of the Senate (House of Representatives) of the General Assembly of the State of South Carolina, by this resolution, recognize the State Ethics Commission on the occasion of its tenth anniversary and commend the Commission for the invaluable and important service it has performed during the past decade.

BE IT FURTHER RESOLVED that a copy of this resolution be forwarded to each member and employee of the State Ethics Commission.

On that date in 1976, the present Executive Director, Gary R. Baker, opened the commission office in the R.L. Bryan Building at 1026 Sumter Street. The Commission moved to the Rembert Dennis Building in 1981, then moved to the present location in 1983. During the past ten years, 19 Commissioners have served, each representing one of the six Congressional Districts.

Three Chairmen have guided the Commission during the past ten years, W. Jack Greer from 1976-1982. Allen L. Ray from 1982-1985, and the present chairman is C. Hugh Patrick, Jr. of Greenville.



# DIGEST OF ADVISORY OPINIONS

**SEC 86-019**

**November 20, 1985**

**SUBJECT: COUNTY COUNCILMAN'S FIRM  
CONDUCTING BUSINESS WITH COUNTY  
LIBRARY**

**SUMMARY:** A County Councilman's firm may conduct business with the County Library provided he takes no part in the contract award process.

Requestor: Penny Forrester,      Entity: Pickens County  
Director                              Library

**SEC 86-020**

**November 20, 1985**

**SUBJECT: PUBLIC OFFICIAL UTILIZING  
LETTERHEAD FOR OFFICIAL STANDS ON  
ISSUES**

**SUMMARY:** A County Auditor was advised to utilize personal stationery to respond to political and social issues which are not office-related. He may utilize letterhead of a type similar to his office stationery provided it contains a statement that it was not paid for by public funds. He may not utilize public stationery, postage, or secretarial service to carry on correspondence regarding political, personal, or social issues unrelated to his office.

Requestor: Cecil L. Stevens, Auditor      Entity: Lee County

**SEC 86-021**

**November 20, 1985**

**SUBJECT: UNIVERSITY EMPLOYEE'S FIRM  
CONDUCTING BUSINESS WITH UNIVERSITY**

**SUMMARY:** A part-time employee's firm may conduct business with the University provided he does not participate in the contracting process.

Requestor: Jack N. Wilson, Asst. Vice President      Entity: Clemson University

**SEC 86-022**

**November 20, 1985**

**SUBJECT: EMPLOYEE OF FIRE MARSHAL'S  
OFFICE AS CANDIDATE FOR THE STATE  
FIRE COMMISSION**

**SUMMARY:** An employee of the State Fire Marshal's Office is not prohibited by the State Ethics Act from being appointed to the State Fire Commission. The Commission advised that, if selected, he would be required to follow the disclosure and disqualification procedures of §8-13-460 in matters involving the appointment of the State Fire Marshall. He was further advised to seek advice concerning dual officeholding.

Requestor: Ron Nordenbrock, Secretary      Entity: Spartanburg County  
Fire Chief's Assoc.

**SEC 86-023**

**November 20, 1985**

**SUBJECT: BOARD OF EDUCATION  
MEMBER-SPOUSE EMPLOYED BY COUNTY  
BOARD OF EDUCATION**

**SUMMARY:** The State Ethics Act would not prohibit the spouse of a County Board of Education Member being hired by the Board, however, he is required to follow the procedures of §8-13-460 with regards to her hiring, and other personal matters, including but not limited to, salary increases and employment matters. He was further advised to not utilize his public position to obtain favorable personnel actions.

Requestor: Robert L. Waldrep, Jr. Attorney at Law      Entity: Anderson County Board of  
Education

**SEC 86-024**

**November 20, 1985**

**SUBJECT: CITY COUNCIL MEMBER  
PRACTICING BEFORE MUNICIPAL COURT**

**SUMMARY:** A City Councilman is advised that he may represent clients in actions in city court or General Sessions, or Court of Common Pleas when the city has no stake in the outcome of the matter.

Requestor: Ralph J. Wilson, Attorney at Law      Entity: City of Conway  
Horry County

**SEC 86-025**

**November 20, 1985**

**SUBJECT: GUBERNATORIAL CANDIDATE  
CONDUCTING BUSINESS WITH PUBLIC  
AGENCY**

**SUMMARY:** A gubernatorial candidate's firm may conduct business with state agencies provided he takes no official action regarding such contracts, in accordance with §8-13-460(b) to avoid even the appearance of impropriety. He is further advised against utilization of confidential information for the benefit of his firm. He may divest himself of the firm upon election or may place his interests in a blind trust in accordance with R52-9.1, 9.2 and 9.3.

Requestor: Honorable Hugh K. Leatherman, Sr.      Entity: Gubernatorial  
Candidate



## POTENTIAL CONFLICTS OF INTERESTS

When the State Ethics Act was enacted in 1975, the General Assembly included a procedure to be followed when a public officeholder has a potential conflict of interests. This procedure is to be followed when the officeholder has to take action or make a decision on a matter which will affect his financial interests. Those financial interests involve not only the officeholder's personal interests, but also those of his spouse, and any children occupying the same family residence. It also includes any business with which he or any member of his household is associated as an employee, officer, owner or director. It also encompasses any business in which the officeholder or a member of his household owns stock worth \$10,000 or more. A business which is a client is also included.

To determine whether the matter requires following the procedure involves making determinations as to the effect of the action or decision. The law requires the procedures to be followed if the matter would substantially affect directly the officeholder's financial interests.

Any public officeholder faced with taking action or making a decision should review the matter involved with three questions to be answered:

1. Will this matter affect my interests or those of my business associations?
2. Is there a direct benefit or loss which will arise out of this action?
3. Will the effect be substantial (i.e., more than nominal)? Substantial means having a distinct effect rather than one which is nonexistent or negligible. In applying the criteria for substantial, the benefit should not be applied against the person's or business' financial status, but instead whether, in actual dollars and cents, there is some measurable financial benefit or loss which will be incurred if the action proceeds.

When the officeholder has made negative determinations based upon these three questions, he could proceed to participate fully in the matter. However, if the answers show that there is some direct substantial benefit or loss, then the officeholder is required to provide a written statement describing his conflict with the matter on which action is to be taken.

This written statement is to be provided to the officeholder's superior (i.e., supervisor, presiding officer, etc.) who shall disqualify the person from taking the required action. If the person with the potential conflict is the presiding officer or otherwise an officeholder who has no superior, he shall provide the written statement to the remaining members of the governing body and shall not participate in the matter. The written statement is to be made part of the minutes of any meeting at which the action is to be taken or considered. The State Ethics Commission has advised that, when a person is required to follow these procedures, he further absent himself or herself from the meeting location in order that consideration of the matter can proceed without any influence by the presence of the person with the potential conflict.

In many prior advisory opinions, the State Ethics Commission has advised that the procedures of Section 8-13-460 be followed such as in the following circumstances:

1. School board members voting on teacher salary increases when the spouse is a school teacher in the district.
2. A city official on a zoning matter which will affect his financial interests or those of a real estate client.
3. An official required to approve a contract award on which he or his business has bid.
4. Officeholders participating in votes on personnel matters, including hiring of members of his household.

The staff of the State Ethics Commission is available to provide assistance to public officeholders who have questions regarding the implications of this code section. Officeholders may desire to request a formal opinion concerning a specific situation or a matter which periodically or continually requires some action. The opinions issued by the Commission are legally binding on the Commission so long as the information provided by the requestor is correct.

Officeholders who desire advice may obtain an informal opinion from the staff by calling or visiting the office of the Commission. The staff will quote prior advisory opinions or offer advice based upon prior opinions. If a formal opinion is desired, a letter requesting such an opinion detailing the matter of the potential conflict should be mailed to the Commission. The Commission meets every other month, so the formal opinions take longer to issue.



Recently, the State Ethics Commission considered a matter in which a public officeholder received some erroneous legal advice from the counsel for the political subdivision. This faulty legal advice caused the officeholder some significant problems. While the Commission does not want to cast doubts about the ability of the legal profession, the Commission feels that proper advice can be obtained quickly and freely from the Commission office.

The Executive Director, Gary R. Baker, and Administrative Assistant, Alice B. Shorter, have been with the Commission since it was organized in 1976. These two staff members work with the State Ethics Act on a day-to-day basis, and are aware of the interpretations which have been given to the various code sections. The Commission has rendered almost six hundred advisory opinions since the inception of the Commission in 1976. During that time, almost three hundred complaints have been resolved.

Questions may be directed to the Commission staff by any person seeking an informal opinion.

An informal opinion can often be given immediately and at its regular bi-monthly meetings. Opinion requests for formal opinions must be in writing, stating in as much detail as possible the specific circumstances of the question. An informal opinion can often be given immediately and involves a verbal response. An informal opinion request may also be followed up by providing the requestor with copies of previously-issued advisory opinions which address same or similar issues.

### **\* STATEMENT OF ECONOMIC INTERESTS FORMS INCOMPLETE**

The State Ethics Commission is having to return an abnormally large number of Statement of Economic Interests forms this year because the filer has simply not followed the directions. Instructions on the face of the form direct that items 12-17 require some response. Each item has a space provided for a positive response and a block for checking "not applicable", if appropriate. The Commission, in reviewing the forms received during January, determined that approximately 15% of the forms received are being returned without a response to at least one of those items.

The State Ethics Commission urges each person required to file the Statement of Economic Interests to respond to each of the questions on the form. Failure to do so will result in the form being returned for completion. Such failure results in added expense, both to the Commission and the filer, as well as a loss of time and effort in correcting the forms.

Tuesday, April 15 is the deadline for filing of the Statement of Economic Interests by public officeholders; however, filers are urged to file now. The State Ethics Commission mailed forms to all persons on record as of January 3, 1986. Any public officeholder who is required by law to file and has not yet received a form, should contact the State Ethics Commission immediately to obtain a copy of the form.

The State Ethics Act requires the following persons to file annually regardless of compensation.

- (1) The chief administrator, chief finance administrator, and chief purchasing administrator of each public entity.
- (2) For State agencies, deputy administrators, and the directors of each separate facility or institution.
- (3) Persons appointed to fill unexpired terms of otherwise elected positions.
- (4) All school superintendents and school board members, regardless of whether elected or appointed, and regardless of salary amount.
- (5) Salaried members of State boards, commission or agencies.
- (6) Employees of regulatory agencies who are associated with a regulated business.
- (7) All elected officials.

Candidates for public office are also required to file the Statement of Economic Interests at the time of becoming a candidate. The proper form is obtained from the party official or election official responsible for accepting declarations of candidacy or petitions to appear on the election ballot.

Officeholders who have filed a Statement of Economic Interests earlier this year are also required to file a form at the time they file as a candidate, however, rather than repeat all the information contained on the form, they are only required to complete the information section, items 1-11, sign and date the form.

Failure to file the Statement of Economic Interests form properly may result in administrative or disciplinary action, or may result in the matter being referred to the Attorney General's Office for prosecution. Persons deemed guilty of violation of the State Ethics Act are subject to a fine of up to \$1,000, up to ninety days imprisonment, or both.



**SEC 86-026**

**January 15, 1986**

**SUBJECT: TOWN COUNCILMAN AS CANDIDATE FOR TOWN POSITION**

SUMMARY: A town councilman would not be prohibited from applying for a position with the town, provided he follows the disclosure and disqualification procedures of §8-13-460.

Requestor: Walter H. Sanders, Jr., Attorney at Law  
Entity: Town of Fairfax

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**SEC 86-027**

**January 15, 1986**

**SUBJECT: POLITICAL PARTY CONDUCTING RAFFLE AS FUNDRAISER**

SUMMARY: The State Ethics Act would not prohibit a political party from conducting a raffle as a fundraiser for party operating expenses. Other statutes may address this issue so the State Ethics Commission advised that the Attorney General's Office be contacted.

Requestor: Julie Yeager, Bookkeeper  
Entity: Democratic Party of South Carolina

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**SEC 86-028**

**January 15, 1986**

**SUBJECT: CITY VENDOR RUNNING FOR CITY COUNCIL**

SUMMARY: A vendor for a town may run for city council, however, he will be required to follow procedures of Section 8-13-460 in any matters affecting his business and may not otherwise participate in approving or taking any other action on the contract which he has with the city.

Requestor: Arthur L. Smiley, Mayor  
Entity: Town of Scranton

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**SEC 86-029**

**January 15, 1986**

**SUBJECT: VOCATIONAL CENTER INSTRUCTOR AS SCHOOL BOARD MEMBER IN ADJACENT COUNTY**

SUMMARY: A school board member, who is a vocational center employee in an adjacent county, is advised to follow the disclosure and disqualification procedures of §8-13-460 in matters coming before the school board which will affect the vocational center.

Requestor: Martin H. Black, Superintendent  
Entity: Bamberg County Board of Education

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**SEC 86-030**

**January 15, 1986**

**SUBJECT: CITY ATTORNEY REPRESENTING CLIENT IN SUIT AGAINST THE CITY**

SUMMARY: A City Attorney is advised against representing clients in suits against the city in which the city has a stake in the outcome, since such representation is incompatible with his public position. The State Ethics Commission further advised that such representation of clients be reviewed with the State Board of Grievances and Discipline.

Requestor: Thomas B. Austin, City Administrator  
Entity: City of Belton

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**SEC 86-031**

**January 15, 1986**

**SUBJECT: ADVISORY COMMITTEE MEMBERS WITH POTENTIAL CONFLICTS**

SUMMARY: Members of an Accomodations Tax Advisory Committee, who are associated with businesses, institutions, or non-profit organizations which are intended recipients of such tax funds, should follow the procedures of §8-13-460 involving the award process, and should completely absent themselves from the meeting location. A member's printing firm may bid on providing printing service to a non-profit association if he has not participated in the award or granting of the contract.

Requestor: T.E. Walsh, Attorney at Law  
Entity: City of Spartanburg

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**SEC 86-008 Modification**

**January 15, 1986**

**SUBJECT: SCHOOL TRUSTEE VOTING ON DISTRICT BUDGET**

SUMMARY: In opinion SEC 86-008, a school district trustee was advised against voting on the school district budget which included salary increases for employees since his spouse is an employee of the district. He was advised to follow the procedures of §8-13-460 in matters related to the school district budget. However, it would not appear to violate §8-13-460 if the school board member with the conflict followed the procedures of that section on the salary issue, if the school board voted on the salary issue as a separate issue and distinct item and the remainder of the budget as another separate and distinct item.

Requestor: Jack F. McIntosh, Attorney at Law  
Entity: Anderson School District #5

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# STATE ETHICS COMMISSIONERS (1976-1986)

DISTRICT	COMMISSIONER	TERM	
		BEGINNING	ENDING
1	Grover F. Bowers, Jr.	02/18/76	05/31/77
	Vernon B. Strickland	05/02/78	04/01/80
	Elrid M. Moody	08/29/80	11/05/80
	John M. Trask, Jr.	05/31/81	07/07/82
	Robert B. Pearlman	07/21/82	05/31/85
	Edward E. Duryea	06/12/85	05/31/89
2	Minnie W. Johnson	02/18/76	05/31/79
	Dr. Leola Adams	05/31/79	05/31/83
	Dr. Clemmie E. Webber	06/13/83	05/31/87
3	Doris H. Brown	02/18/76	05/31/81
	Dr. D.H. Daniel	07/07/81	05/31/89
4	W. Jack Greer, Chairman	02/18/76	06/09/82
	C. Hugh Patrick, Jr., Chairman	06/09/82	05/31/87
5	Sylvia S. Holley	02/18/76	05/31/79
	Frances Daniel	05/31/79	05/31/83
	S. Anne Walker	06/13/83	05/31/87
6	W. Robert Chestnut	02/18/76	05/31/81
	Allen L. Ray, Chairman	07/07/81	05/31/85
	James C. McLeod, Jr.	06/12/85	05/31/89

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## State Ethics Commission

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